IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 232 OF 1993

1. Shankar Deoram Kale
2. Dilwar Abdul Sayyed ..Appellants

versus

1. Vasant Shivram Golesar
2. Managing Director, Kolpewadi Sakhar Karkhana, Kolpewadi
3. United India Insurance Co. ..Respondents

Mr. P. N. Joshi with R. M. Haridas for the Appellants.
Mr. V. Z. Kankaria for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 8TH FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the appellants and the respondents.

2. Appellant No.1 is the owner of the tractor which caused an accident. The claimant - Original Respondent No.1 suffered from an accident. On 13.2.1986 he was going on by bicycle along with his friend, when tThe tractor with two trollies came

from behind and gave dash to him. He fell on the ground and the wheel of the trolley ran over his legs resulting in permanent partial disablement, which was proved as Exhibit 48. The victim was working as a labourer in a factory at Musalgaon earning Rs.20/- per day. He cannot cross his legs nor he can bend his leg in knee. He claimed Rs.50,000/- but the Tribunal awarded Rs.35,000/- only. He was in hospital for three months and to undergo three operations.

3. Counsel for the owner of tractor vehemently urged that even if the facts as stated by the claimant, are accepted, firstly, it is a case of contributory negligence and secondly if the tractor dashed bicycle from behind i.e. from backside of the bicycle then the victim must come under the wheel of the tractor itself and not under the wheels of the trolleys. This argument regarding the manner in which the accident might have occurred cannot be accepted because the accident has occurred and according to the claimant he came under the wheel of the trolley. It is not impossible that in such a case the claimant would not come under the wheels of the trolley. There is no evidence to suggest the theory of contributory negligence. Therefore looking to the circumstances and the permanent partial disablement proved by the victim and the

period of his hospitalisation and three operations which he had to undergo, compensation awarded is adequate. No interference is called for. Appeal dismissed. No order as to costs. However, according to the appellant the interest was on higher side, therefore it is reduced to 9%. Claimant will be entitled to withdraw the amount deposited by the appellants at the above rate of interest.

4. Parties to act on an ordinary copy of this order duly authenticated by the Court Sheristedar.

8.2.2005 (D. G. DESHPANDE, J.)